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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,544	02/07/2001	Andy Zupan	462	2538

7590

06/16/2003

Law Offices of John D. Gugliotta, PE., Esq.
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EXAMINER

PATEL, MITAL B

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 06/16/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Advisory Action

Application No. 09/778,544		Applicant(s) ZUPAN, ANDY	
Examiner Mital B. Patel		Art Unit 3761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 18-35.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Continuation of 5. does NOT place the application in condition for allowance because: Although, the specification and drawings teach and discloses the various components of the valves, the disclosure is not enabled with respect to the sequence of events that occur when the activation button is depressed to fill the chamber up with the oxygen and nitrogen and how the seat member and ball are displaced during the dispensing of the oxygen and nitrogen. Based on the disclosure of the drawings and specification, there is no teaching of how the nitrogen and/or oxygen gets filled into chamber from the canister 20 and then in turn how the nitrogen and/or oxygen gets discharged with a constant volume. The Applicant contends that "a patent need not teach, and preferably omits, what is well known in the art." However, the specific elements with respect to their function of filling and discharging are not taught and omitted from the disclosure, and that is also the novelty or inventive concept for which the Applicant seeks protection i.e., those elements and/or functions that the Applicant deems to be omittable are critical and essential to the claimed invention. Therefore, it is unclear to the Examiner how that disclosure does not need to be taught or can be preferably omitted. Furthermore, Applicant states that in Figure 11, 'a ball 56 engages a hard metal seat 58'..."upon engagement with a hard surface creates a tangent or a meeting of a curved surface in a single point, thereby preventing 'sealable engagement' between the two, or more specifically between the ball 56 and seat 58". However, upon examination of Figure 11, ball 56 and seat 58 are shown to be in a tight sealed engagement, which contradicts the recitation of "preventing a sealing seat from being achieved" Finally, the declaration under 37 CFR 1.132 filed 10/24/02 is insufficient to overcome the rejection of claims 18-35 based upon insufficiency of disclosure under 35 U.S.C. 112, first paragraph as set forth in the last Office action because: there is not sufficient evidence or facts in the Declaration that shows that the invention is enabled. The statements provided in the declaration do not provide proof of how the invention works..